THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 20216 of 2005

Oral order:

The petitioner while working with the respondents-APSRTC as Driver, was retired from service on medical grounds due to Parkinson's disease, vide proceedings dated 02.09.2005 of respondent No.3. The petitioner states that as per the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, the employer is under an obligation to provide alternative employment if an employee sustains disability during the course of employment, but the action of the respondents in not providing him alternative employment and retiring him from service on medical grounds is illegal and arbitrary. He thus prays for appropriate directions.

The respondents though filed counter, none appeared on their behalf despite passing over the matter to 2.15.

Heard the learned counsel for the petitioner and perused the counter-affidavit.

The fact that the petitioner was retired from medical grounds is not in dispute. Though the petitioner in the affidavit filed in support of the writ petition contended that he suffered disability during the course of his employment with the respondents, which resulted in his retirement from service on medical grounds, the fact remains, the respondents in the counter filed by them, did not dispute the factum of the petitioner sustaining disability during the course of his employment with them. Under Section 47 of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, when an employee suffers disability during the course of his employment, the employer is under an obligation to provide alternative employment to the employee. Admittedly, in the instant case, the respondents have not considered the case of the petitioner for providing alternative employment. A Division Bench of this Court in ***N. Siva Kumar v. APSRTC, Musheerabad, Hyderabad***[1], considered similar issue and directed the authorities to consider the case of the employee in the light of the provisions of the Act for alternative

employment. The relevant portion reads as under;

> "Having regard to the fact that a right has been conferred upon the appellant herein under a statute, although the question raised herein has not been raised before the learned single Judge, we, in modification of the order passed by the learned single Judge, direct the appellant herein to file a representation, if not already filed, before the appropriate authority seeking the relief prayed for in this appeal, and on receipt of such a representation, the appropriate authority may consider the case of the appellant in the light of the aforementioned provisions and the decisions referred to hereinbefore, and pass an appropriate order at an early date, preferably within a period of four (4) weeks from the date of communication of this order."

Since the respondents before retiring the petitioner from service, did not consider his case for providing alternative employment, this Court has no option except to dispose of the writ petition directing the 2nd respondent to consider the case of the petitioner for providing alternative employment in terms of the provisions of Section 47 of the of the Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995, with all consequential benefits in the light of the judgment of the Division Bench of this Court in ***N. Siva Kumar v. APSRTC, Musheerabad, Hyderabad*** (1 supra) and pass appropriate orders within a period of two months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. No costs.

N.V. RAMANA, J.

Dated: 17th April, 2007.
KSR

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1 2001 (3) ALD 166 (DB)